

State of California  
Regional Water Quality Control Board  
San Diego Region

ENFORCEMENT SUMMARY REPORT  
November 18, 2009

ITEM: 11

SUBJECT: Administrative Assessment of Civil Liability, City of San Diego, Sewage Collection System. The Regional Board will consider adoption of a Tentative Order that would impose \$620,278 in civil liability recommended in Complaint No. R9-2009-0042 for violations of State Board Order 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. (Tentative Order No. R9-2009-0172) (*Frank Melbourn*)

PURPOSE: The Regional Board will conduct a public hearing and consider adoption of Tentative Administrative Civil Liability (ACL) Order No. R9-2009-0172 (Supporting Document No. 2). The Regional Board may approve, modify, or reject assessment of the recommended liability.

PUBLIC NOTICE: Notice of the Regional Board's consideration of the Tentative ACL Order, and the opportunity for public comment was posted on the Regional Board's website and e-mailed to interested parties on October 14, 2009. Notice was also published in the San Diego Union-Tribune on October 20, 2009 (Supporting Document No. 3).

DISCUSSION: The City of San Diego submitted information and technical reports to the Regional Board stating that on or about August 20, 2007, and until August 24, 2007, the City discharged approximately 380,000 gallons of untreated sewage from a manhole in Rancho Bernardo into Lake Hodges, a domestic water supply reservoir and a designated impaired water body as listed on the Federal Clean Water Act Section 303(d) list. See Site Map (Supporting Document No. 1). The wastewater spill start date is based upon the City's receipt of a sewer odor complaint on Monday, August 20, 2007, at 10 a.m.

On October 24, 2007, the Regional Board issued Notice of Violation (NOV) No. R9-2007-0199 to the City for allegedly violating Prohibitions C.1. and C.2. of State Board Order No.

2006-0003-DWQ, Section 301 of the Federal Clean Water Act, and Section 13376 of the Water Code. The City is enrolled under State Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (WDID No. 9SSO10658) because it owns and operates a sewage collection system. The State Board Order defines a Sanitary Sewer Overflow (SSO) as “[a]ny overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system.” Prohibition C.1. of the State Board Order states that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”

On July 22, 2009, the Regional Board issued ACL Complaint R9-2009-0042 with a staff report (Supporting Document No. 4) to the City recommending a liability of \$620,278 (\$1.50/gallon multiplied by 380,185 gallons plus \$10,000/day of discharge multiplied by five days). The ACL Complaint and Staff Report were based upon a joint investigation by the Regional Board and State Board Office of Enforcement.

The final recommended liability amount was derived after consideration of the statutorily-required factors of Water Code Section 13385 as influenced by information related to this matter including the following:

1. Lake Hodges is a potable water reservoir supplying water to the Santa Fe Irrigation District and San Dieguito Water District. After the wastewater spill, use of lake water as a potable water supply was halted due to major public health concerns over the spread of disease until September 2, 2007, a period of 10 days from when the City first discovered the discharge.
2. Lake Hodges is a Federal Clean Water Act Section 303(d) listed water body for Color, Manganese, Nitrogen, pH, Phosphorus, and Turbidity. The discharge of untreated wastewater into Lake Hodges exacerbated the current water quality problems and severely threatened public health with the introduction of human pathogens to the water supply source.

3. City staff failed to discover and respond to the SSO for over four days (96 hours) after receiving a credible sewer odor complaint.
4. The City has a substantial history of significant SSOs with similar circumstances (i.e., delayed response).
5. The City knew that Lake Hodges is vulnerable to SSOs from its sewage collection system, yet failed to implement adequate warning systems (e.g., electronic SSO sensors on sewer lines near Lake Hodges or appropriate prioritization for sewer odor complaints).
6. The City is responsible for the condition and maintenance of the sanitary sewer line that failed.
7. The City has the ability to pay the liability from its \$17.1 million Public Liability Fund.
8. Once the City of San Diego discovered the location of the SSO, it took the necessary steps to stop the discharge and clean up the small amount of sewage that was recoverable.
9. The City maintains a large network of sewer lines and pump stations. Over the past 10 years the City has had success in reducing the number of illicit sewage discharges and the overall volume of sewage discharged.
10. The Regional Board conducted this enforcement action in compliance with the State Board's Enforcement Policy.
11. Liability amounts vary among cases because each enforcement case has its own unique facts. The liability amount recommended for this case is within the range specified by the Water Code.

Supplemental Environmental Project (SEP) Proposal

On October 26, 2009, the City submitted a proposal for a SEP, titled "*Lake Hodges/San Dieguito Watershed Water Quality Monitoring Project* (Supporting Document No. 7). The proposed SEP would fund a five-year water quality monitoring program in the Lake Hodges watershed. Prosecution staff has provided a cursory review of the SEP

as Supporting Document No. 8, without making a recommendation.

**LEGAL CONCERNS:** None.

**SUPPORTING  
DOCUMENTS:**

1. Location Map
2. Tentative ACL Order No. R9-2009-0172
3. Proof of Newspaper Publication
4. ACL Complaint R9-2009-0042 with Staff Report and Attachments
5. Prosecution Team Evidence and Policy Statement
6. City of San Diego Evidence and Policy Statement
7. City of San Diego SEP
8. Regional Board Review of SEP Proposal

**RECOMMENDATION:** The Prosecution Team recommends adoption of Tentative ACL Order No. R9-2009-0172 in the amount of \$620,278.